

Remarks

Entry of the above-noted amendments, reconsideration of the application, and allowance of all claims pending are respectfully requested. By this amendment, claims 2, 4-6, 8 and 18 are amended. These amendments to the claims constitute a bona fide attempt by applicants to advance prosecution of the application and obtain allowance of certain claims, and are in no way meant to acquiesce to the substance of the rejections. Support for the amendments can be found throughout the specification (e.g., page 6, lines 18-22; page 8, line 29-32), drawings (e.g., FIG. 1), and claims. Claims 1-32 are pending.

Claim Rejections - 35 U.S.C. §103

MPEP §706.02(j) states: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

MPEP §2143.01 states: "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved, as a whole would have suggested to those of ordinary skill in the art. *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

The Examiner rejected all claims under 35 U.S.C. 103 as being obvious based on Wickham et al. (U.S. Patent 6,370,154) in view of Zimmermann (U.S. Patent 6,094,582). Claims 5-6 and 16 were rejected based additionally on Official Notice being taken of certain IP communications. Applicants respectfully submit that the applied references, with or without modification or combination, assuming, *arguendo*, that the modification or combination of the applied references is proper, does not teach or suggest one or more elements of the claimed invention, as further discussed below. Applicant respectfully traverses the rejections and seeks withdrawal of the rejections resulting in allowance of the application.

In the rejection of claim 1, Wickham was acknowledged by the Examiner as not teaching certain steps of claim 1, e.g. sending a set up message that included a holding time, and a host making the data call at a starting time. The steps were alleged to be taught by Zimmermann. As explained below, Zimmermann does not provide the required teachings with regard to the steps.

The method according to claim 1 includes the step of sending a set of message including a holding time of said data call from the host to a switch connected to the network. It is well settled by case law that the claims are to be interpreted in light of the specification and that terms used in the claims are to be given the meaning provided in the specification. Of course, care must be exercised not to import from the specification a limitation not present in the claims. The "holding time" of the data call as used in claim 1 must be determined in view of the specification. The term "holding time" is utilized a number of times in the specification and it is clear that "holding time" means the time interval that a communication path through the network must be maintained for the transmission of data from the host to the destination to be completed.

Zimmermann is directed to a communication system in which it is possible for more than one call to attempt to use the same communication channel. The object of the invention, as stated in the Summary of the Invention section, is to ensure a high transmission quality for at least two calls which simultaneously attempt to use the same communication channel for transmission. This goal is sought to be accomplished by the use of multiple call states associated with various transmission parameters such that different parameters associated with each call state can be

utilized during contention for the same channel by multiple calls to determine which call will have access to the channel.

Zimmermann is alleged to teach "sending a set up message including a holding time of the data call from the host to a switch connected to the network" at col. 13, lines 43-50 and col. 14, lines 35-55.

"It may also be appreciated that a preferential selection of the **holding times** T(init) together with the setting of the predetermined transmission conditions can be performed. One basic selection would be that the predetermined transmission conditions to be satisfied in each call state makes the call more robust whenever it transmits to a call state of the higher order and that the **holding time** in each call state is the same."

Col. 13, lines 43-50 of Zimmermann; emphasis added.

Although the phrase "holding time" appears in the above quoted language, it is important that one understand what this phrase means as used in Zimmermann. As used in Zimmermann, holding time refers to the length of time that a call has been in a given call state. See col. 12, line 65-col. 13, line 6. That is, the holding time referenced in Zimmermann refers to how long it has been since a call entered a given call state. Zimmermann does not teach or suggest the use of a time interval needed to be maintained by a network communication path in order to complete the transmission of certain user data, e.g. transmit a user's data file.

The language in Zimmermann at col. 14, lines 43-50 also refers to holding time, but uses this phrase to have the same meaning explained in the above paragraph. This text describes an embodiment which permits a call to achieve a higher priority than other calls. It is explained that the call priority indication may be coupled with different settings of predetermined transmission conditions and the holding time for a call state. That is, it suggests that the priority decision may be based in part on the holding time in a given call state. There is no suggestion in this portion of text that "holding time" should have a meaning other than that as explained above. Therefore, Zimmermann does not teach sending a set up message including a holding time of the data call from the host to a switch connected to the network as required by claim 1. Since neither applied reference supports this requirement, the rejection of claim 1 should be withdrawn.

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Claim 2 defines the data call as a call which transfers a file from the host of data of known length. This limitation is alleged to be taught by Wickham at column 14, lines 20-29. This text reads:

Analysis seeks three blanks plus the character string "IP".

datacontinuation

Data continuation is the same as data that is the result of data being continued on the following line because of the length of the data. Analysis seeks the mark "<" and three blanks.

It is believed to be clear that the above quotation does not teach a call in which a file from the host consisting of data of known length is transferred. Therefore, the withdrawal of the rejection of claim 2 is requested.

Claim 3 recites that the holding time is equivalent to a time to transfer the file of data of known length at a first rate. This is alleged to be disclosed in Zimmermann at column 9, lines 29-58 [perhaps lines 20-58 were intended]. The cited text describes one embodiment in which the call is held in a first call state for a predetermined time period before it is transferred into a second call state. Other criteria are suggested for causing the transferring of the call from the first call state to the second call state. Measurement of bit error rate on the channel is also discussed. It is suggested that the bit error rate on the channel be measured a predetermined number of times over a predetermined time period to obtain a channel quality measurement.

It will be noted that the transfer from one call state to another call state in Zimmermann corresponds to call allocation relative to a channel. More specifically, transfer from one call state to another call state does not represent the completion of the call or the termination of the call. It is in this context that the text cited in column 9 should be understood. The language referring to holding the call in a first call state for a predetermined time period merely refers to one technique for determining how long a call is to be held in a first call state before it is passed to a second call state. This has nothing to do with the total call duration time which is a function of the amount of information to be transferred from the host to the destination and the rate at which the information is transferred. Likewise, making an internal bit error rate measurement by transmitting a predetermined test message a plurality of times does not teach and is not equivalent to the requirements in accordance with claim 3. Therefore, Zimmermann does not

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provide the teachings as required by claim 3 and the withdrawal of the rejection of claim 3 is requested.

Claim 4 explicitly defines the holding time of the data call as being a predetermined time interval required for information to be communicated during the data call to be received by the destination from the host. As explained above, this limitation is not taught or suggested by Zimmermann.

Claim 5 defines a further step of determining a predetermined time duration of the holding time prior to the step of sending a set up message. This limitation is not taught or suggested by Zimmermann, Wickham, or a combination thereof.

Independent method claim 8 is believed to be allowable for reasons discussed above regard to claims 1 and 5.

Independent apparatus claim 18 is likewise believed to be allowable for reasons discussed above with regard to claim 1 and the lack of an appropriate teaching of "holding time" by the applied references.

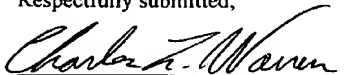
Pursuant to MPEP 706.07(c), it would be inappropriate to make an Office Action final should new references be applied in support of a rejection of any unamended claim since applicant has made no amendments to such claims to necessitate such a change of position by the Examiner.

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In view of the above amendments and remarks, allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at the indicated telephone number.

Respectfully submitted,



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